



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

**CERTIFIED MAIL
Return Receipt Requested**

July 12, 2013

R BRUCE FLEMING
7527 SW LAVIEW DR
PORTLAND, OR 97219

Reference: File S-87883

Dear Applicant:

**THIS IS NOT A PERMIT AND IS
SUBJECT TO CHANGE AT THE NEXT PHASE OF PROCESSING.**

This letter is to inform you of the preliminary analysis of your water-use permit application and to describe your options. In determining whether an application may be approved, the Department must consider the factors listed below, all of which must be favorable to the proposed use if it is to be allowed. Based on the information you have supplied, the Water Resources Department has made the following preliminary determinations:

Initial Review Determinations:

1. The application proposed the use of 0.5 cubic foot per second (CFS) of water from an unnamed stream, a tributary of Nehalem River, and Nehalem River, a tributary of Nehalem Bay, for pond maintenance, fire protection, livestock, and wetland enhancement November 1 through July 31.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The withdrawal of surface water for emergency fire-fighting uses is *an exempt use* under ORS 537.141, and therefore does not require a permit. It will not be considered a part of this application, unless you inform the Department otherwise and pay additional examination fees in the amount of \$250 for an additional use beyond the first proposed use.
4. Under Oregon Revised Statute (ORS) 537.141(2), the use of surface water for livestock watering *may be exempt* from the water right permitting process if: (a) the water is diverted from a stream to a trough or tank through an enclosed water delivery system; (b) the delivery system either is equipped with an automatic shutoff or flow control mechanism or includes a means for returning water to the surface water source through an enclosed delivery system; and (c) the operation is located on land from which the livestock would have legal access to both the use and source.

5. The use of water from an unnamed stream, a tributary of Nehalem River, and Nehalem River, a tributary of Nehalem Bay, for wetland enhancement **is not allowable** under the North Coast Basin Program. The waters of the North Coast Basin are only classified for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life. However, the use of water for pond maintenance and livestock is allowable under the North Coast Basin Program.

You may consider amending your application to use water for wildlife purposes in lieu of wetland enhancement; wildlife means “the use of water by or for sustaining wildlife species and their habitat”, as defined in OAR 690-300-010(62).

6. Surface water is available during the period November 1 through July 31.
7. The application is subject to Section 4(d) of the Endangered Species Act.
8. The standard allowable rate of water necessary for pond maintenance is 0.01 cubic foot per second (CFS) for each acre foot of stored water. The application requested 0.5 CFS for maintenance of a pond constructed under Permit R-13974 (Application R-85899), which authorized the storage of 11.1 AF in Fleming Pond. Therefore, if the application is approved, the rate allowed for pond maintenance will be limited to 0.111 CFS.
9. Please refer to the **Additional Information Required** section below for specific information regarding deficiencies with the application.

Summary of Initial Determinations

The use of 0.5 CFS, further limited to 0.111 CFS for pond maintenance, from an unnamed stream, a tributary of Nehalem River, and Nehalem River, a tributary of Nehalem Bay, for pond maintenance and livestock may be allowed during the full period requested, November 1 through July 31.

You may wish to consider livestock use as an exempt use if all the criteria described in #4 above can be met. You may wish to amend the application to include wildlife in lieu of “wetland enhancement” – see #5 above. If you wish to amend your application, please do so by August 15, 2013 or request an administrative hold on processing the application.

Because of the Department's determination, your application can be moved to the next phase of the water-rights application review process, where public interest factors will be evaluated. However, due to #8 above, your application will likely be limited accordingly.

Additional Information Required:

Additional information is required to process your application prior to issuance of any Proposed Final Order that may recommend permit approval. Please provide the following:

- The map submitted does not meet the requirements of OAR 690-310-0050(4)(a). Please provide a map that shows the locations of both POD 1 and POD 2 by reference to a recognized public land survey corner. The locations may be shown by distance and bearing or by coordinates (distance north or south and distance east or west from the corner).

- If you wish to pursue a permit for pond maintenance and livestock, you will need to pay outstanding exam fees in the amount of \$250 for the one additional use, beyond the first, which is based on:

Category	Fee
Base	\$700
Up to 1 CFS	\$250
(1) add'l POD @ \$250 ea	\$250
(1) add'l authorized use (livestock) @ \$250 ea	\$250
TOTAL EXAM FEES:	\$1450
PAID:	\$ 1200

Please feel free to contact me at 503-986-0816 to discuss the proposed use(s) and appropriate fees.

Please submit this information no later than Thursday, August 15, 2013. If you are unable to submit the information listed above, you may request an administrative hold for up to an additional 180 days. You must submit the request in writing, stating how much more time you will need and why you need additional time. If an administrative hold is granted, your application will not be processed further until the requested information is received or the extended deadline has passed.

If we do not receive the items requested above or a request for an administrative hold by this date, the Department will likely proceed with a Proposed Final Order recommending denial of the application.

Please reference the application number when sending any correspondence regarding the conclusions of this initial review. Comments received within the comment period will be evaluated at the next phase of the process.

At this time, you must decide whether to proceed or to withdraw your application as described below.

Withdrawal Refunds:

If you choose not to proceed, you may withdraw your application and receive a refund (minus a \$200 processing charge per application). To accomplish this you must notify the Department in writing by **Friday, July 26, 2013**. For your convenience you may use the enclosed "STOP PROCESSING" form.

To Proceed With Your Application:

If you choose to proceed with your application, you do not have to notify the Department. Your application will automatically be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period the Department will complete a public interest review and issue a Proposed Final Order.

If A Permit Is Issued It Will Likely Include The Following Conditions:

1. Measurement, recording and reporting conditions:
 - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at the point of diversion on Nehalem River. The permittee shall maintain the meter or measuring device in good working order.
 - B. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead pool storage must be installed and maintained in the reservoir.
 - C. The permittee shall maintain all required devices in good working order.
 - D. The permittee shall allow the watermaster access the measuring device(s); provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
 - E. The Director may require the permittee to keep and maintain a record of the amount (volume) of water diverted, and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit.
 - F. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.
2. You may be required to install fish screens at the point of diversion to meet Oregon Department of Fish and Wildlife specifications for adequate protection of aquatic life.

This initial review does not attempt to address various public interest issues such as sensitive, threatened, or endangered fish species. These issues will be addressed as the Department reviews comments from the public and other agencies, and prepares a Proposed Final Order. You should be aware that, if significant public interest issues are found to exist, such a finding could have an impact on the eventual outcome of your application.

The water source identified in your application may be affected by an Agricultural Water Quality Management Area Plan. These plans are developed by the Oregon Department of Agriculture (ODA) with the cooperation of local landowners and other interested stakeholders, and help to ensure that current and new appropriations of water are done in a way that does not adversely harm the environment. You are encouraged to explore ODA's Water Quality Program web site at http://www.oregon.gov/ODA/NRD/water_agplans.shtml to learn more about the plans and how they may affect your proposed water use.

If you have any questions:

Feel free to call me at 503-986-0816 if you have any questions regarding the contents of this letter or your application. Please have your application number available if you call. General questions about water rights and water use permits should be directed to our customer service staff at 503-986-0801. When corresponding by mail, please use this address: Kerry Kavanagh, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Kerry Kavanagh
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

S-87883
WAB 1-41
POU 1-41
GW - n/a

APPLICATION FACT SHEET

Application File Number: S-87883

Applicant: R BRUCE FLEMING

County: Columbia

Watermaster: 1

Priority Date: April 3, 2013

Source: UNNAMED STREAM, A TRIBUTARY OF NEHALEM RIVER; NEHALEM RIVER, A TRIBUTARY OF NEHALEM BAY

Use: POND MAINTENANCE, FIRE PROTECTION, LIVESTOCK, AND WETLAND ENHANCEMENT

Quantity: 0.5 CUBIC FOOT PER SECOND

Basin Name & Number: North Coast, #1

Stream Index Reference: Volume 2 NEHALEM BAY & TRIB

Point of Diversion Locations:

SESW, SECTION 9, T6N, R5W, W.M.; 250 FEET NORTH AND 300 FEET EAST FROM SW CORNER, SESW, SECTION 9

SESW, SECTION 9, T6N, R5W, W.M.; NONE GIVEN

Place of Use:

SE $\frac{1}{4}$ SW $\frac{1}{4}$
SECTION 9
TOWNSHIP 6 NORTH, RANGE 5 WEST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, July 26, 2013

PUBLIC NOTICE DATE: Tuesday, July 16, 2013

30 DAY COMMENT DEADLINE DATE: Thursday, August 15, 2013

Mailing List for IR Copies

Application #S-87883

IR Date : July 12, 2013

Original emailed to applicant:

R-BRUCE FLEMING
7527 SW LAVIEW DR
PORTLAND, OR 97219

Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)
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SENT VIA EMAIL:

1. WRD - Watermaster #1
2. Applicant - rbruce11@juno.com
3. Agent - crawford_df@yahoo.com
4. ODFW
5. DEQ

Copies sent to:

1. WRD - File # S-87883
2. WRD - Water Availability: Shawn Turner

IR, Map, and Fact Sheet Copies sent to:

3. Department of Agriculture

Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)

4. Kim Kratz, Director, Oregon State Habitat Office, National Marine Fisheries Service,
1201 NE Lloyd Blvd, Portland, OR 97232
5. Paul Henson, State Supervisor, USFWS,
Oregon Fish & Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266

COPYSHT.IR

Caseworker: Kerry Kavanagh

APPLICATION PROCESS DESCRIPTION FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

In order to take and use the waters of Oregon, a citizen must first obtain a permit from the Water Resources Department. The water must be used for beneficial purpose - without waste. To become well-informed about water right topics, weekly public notice, forms and fees please visit our web site at www.wrd.state.or.us

1. Pre-application considerations

- follow instructions in the application packet
- if you have questions about completing an application or would like to arrange a pre-application conference contact the Department's Water Rights Information Group (WRIG) at 503-986-0801

2. Application filing

- application with fee is received by the Department
- Department determines completeness of application
- if use is not allowed by statute (ORS 538), the application and fees are returned to the applicant
- incomplete application and fees are returned to the applicant
- only a complete application receives a tentative priority date, is assigned a caseworker, and moves forward for processing

3. Initial Review (IR)

- caseworker reviews application by considering basin plans, water availability, statutory restrictions and all other appropriate factors
- caseworker sends IR report to applicant
- contact the caseworker if you have questions about the IR
- seven days after date of the IR, it is included in Department's weekly Public Notice
- public comments must be submitted within 30 days after the Public Notice
- **administrative hold** may be requested in writing by applicant

4. Proposed Final Order (PFO)

- caseworker evaluates application against required criteria and develops draft permit, if appropriate
- PFO includes instructions for filing of protests

- caseworker considers public comments and mails PFO to applicant
- the PFO is included in Department's weekly Public Notice
- public protests to the PFO must be submitted within 45 days after the Public Notice

Stop Processing deadline is within 14 days of Initial Review - use the form below

- applicant may request no further action and fee refund of all but \$200

STOP PROCESSING REQUEST FOR

GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

Applicant notification to withdraw Water Right Application # _____

After reviewing the Initial Review for my application, I request that processing be stopped and the fees be refunded (minus a \$200 examination fee.) I understand that without a valid permit I may not legally use the water as requested in my application

Signature _____ date _____

Signature _____ date _____

Under ORS 537.150 (5) and 537.620 (5) timely submission of this request authorizes that the water right application process be stopped and all filing fees (except \$200 examination fee) be returned.

This notice must be received at Water Resources Department by _____

Return the notice to: OWRD, Water Rights Division

STOP PROCESSING

725 Summer Street, NE - Suite A

Salem OR 97301-1271

5. *Final Order (FO)*

- if no protest is filed, Final Order is issued

The protest process

If one or more protests are filed, permit process consists of:

- settlement discussion
- contested case hearing
- proposed order
- period of time to file exceptions
- possible hearing by Water Resources Commission
- final order issued

Permit holder responsibilities

- comply with all water use conditions of the permit
- advise Department of address change or assignment to new permit holder
- if need arises, request extension of time or authorize cancellation of permit
- submit timely claim of beneficial use (COBU) to Department
- most permits require COBU to be prepared by a Certified Water Right Examiner
- permits may be canceled by the permit holder or by the Department for failure to comply with or one or more permit conditions